STATE OF MICHIGAN
IN THE
SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

EVA DEVILLERS, as Guardian and Conservator of MICHAEL J. DEVILLERS,

Plaintiff-Appellee,

v

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

Supreme Court No. 126899

Court of Appeals No. 267449

Oakland County Circuit Court
No. 02-046287-NF

AMICUS CURIAE BRIEF OF THE COALITION PROTECTING AUTO NO-FAULT (CPAN)

Respectfully submitted,

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
Attorneys for *Amicus Curiae* CPAN
George T. Sinas (P25643)
Steven A. Hicks (P49966)
3380 Pine Tree Road
Lansing, MI 48911
(517) 394-7500

Date: March 24, 2005

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS,
BRAKE, BOUGHTON
& McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

TABLE OF CONTENTS

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.

3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

INDEX OF AUTHORITIES

Page

Cases

Statutes

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.

3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

CONCURRING STATEMENT OF JURISDICTIONAL BASIS

CPAN concurs with Plaintiff-Appellee's Statement of Jurisdictional Basis.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS,
BRAKE, BOUGHTON
& McINTYRE, P.C.

3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

CONCURRING STATEMENT OF FACTS

CPAN concurs with Plaintiff-Appellee's Statement of Facts.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS,
BRAKE, BOUGHTON
& McINTYRE, P.C.

3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

CONCURRING STATEMENT OF QUESTIONS PRESENTED

CPAN concurs with Plaintiff-Appellee's Counter-Statement of Questions Presented, which, unlike Defendant-Appellant ACIA's Statement of Questions Presented, follows this Court's instruction in granting leave to appeal as to what should be addressed on appeal.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS,
BRAKE, BOUGHTON
& McINTYRE, P.C.

3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

CONCURRING STATEMENT OF STANDARD OF REVIEW

CPAN concurs with Plaintiff-Appellee's Statement of Standard of Review.

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

INTRODUCTION

The Coalition Protecting Auto No-Fault ("CPAN") is a broad-based group formed to preserve the integrity of Michigan's model no-fault automobile insurance system. CPAN's member organizations and associations range from major medical organizations and patient advocacy groups directly involved in first-party no-fault issues to consumer groups that have members concerned with third-party claims. CPAN's membership is comprised of fourteen medical provider groups and thirteen consumer organizations:

CPAN: Coalition Protecting No-Fault	
Medical Provider Groups	**Consumer Organizations**
Michigan Academy of Physicians Assistants	Brain Injury Association of Michigan
Michigan Assisted Living Association	Disability Advocates of Kent County
Michigan Association of Centers for Independent Living	Michigan Paralyzed Veterans of America
Michigan Brain Injury Providers Council	Michigan Partners for Patient Advocacy
Michigan Chiropractic Society	Michigan Protection and Advocacy Services
Michigan College of Emergency Physicians	Michigan Rehabilitation Association
Michigan Dental Association	Michigan Citizens Action
Michigan Health & Hospital Association	Michigan Consumer Federation
Michigan Home Health Care Association	Michigan State AFL-CIO
Michigan Orthopedic Society	Michigan Trial Lawyers Association
Michigan Orthotics and Prosthetics Association	Michigan Tribal Advocates
Michigan Osteopathic Association	Michigan UAW
Michigan State Medical Society	American Association of Retired Persons
Michigan Nurses Association	

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.

3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

This case concerns whether Section 3145(1) of the Michigan Auto No-Fault Act, e.g. the "one year back rule" provision, precludes "judicial tolling" when there is a delay in issuing a formal denial of a claim for no-fault benefits. MCL 500.3145(1). Auto Club Insurance Association ("ACIA") seeks to overturn this Court's prior ruling in *Lewis v DAIIE*, 426 Mich 93; 393 NW2d 167 (1986), which established that "judicial tolling" is permissible so long as the plaintiff submits a specific claim for benefits and diligently pursues the claim.

A decision by this Court to overturn *Lewis* will have far-reaching consequences for not only auto accident victims, but also medical providers, because it will do integral harm to the no-fault system in Michigan. CPAN and its members are gravely concerned that if this Court overturns its prior ruling in *Lewis,* a fundamental change will have been made to the no-fault system, which will have very significant financial consequences for the following: (1) medical providers, who make no-fault claims on behalf of their patients to recover payment for medical treatment provided to them, and (2) auto accident victims, who, as patients, need incurred medical bills to be paid by the no-fault system for them to avoid potentially devastating personal financial consequences.

Moreover, CPAN and its members also recognize that if *Lewis* is overruled, medical providers will simply have no other choice but to file lawsuits to protect their interests rather than risk losing the right to recover payment from a no-fault insurer for medical services provided to an auto accident victim. Without question, this Court's decision will have a significant impact on providers in their daily activities of providing medical services to injured persons. If *Lewis* falls, the days of cooperation between providers and insurers will end, only to be replaced by increased litigation whenever there is delay in paying a claim.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS,
BRAKE, BOUGHTON
& McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

In the early 1970s, the automobile insurance business went through major changes with the advent of the no fault insurance laws in states like Michigan. At that time, no-fault was seen as the solution to an unwieldy third-party tort system. In Michigan, the legislature designed a no-fault system which would decrease litigation by creating a threshold for third-party tort claims and requiring prompt payment of first-party benefits claims. Allowable expenses (such as medical bills), replacement services, wage loss, and survivor's loss would no longer to be a part of the third-party tort claim in most cases; instead, the duty to pay for such items under the no-fault system would typically rest with one's own insurance company. *Underhill v Safeco Ins Co,* 407 Mich 175, 191; 284 NW2d 463 (1979).

In adopting a no-fault system, however, the legislature did impose certain limitations on first-party claims, as set forth in MCL 500.3145, including a bar on recovering "benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced". This provision is commonly known as the "one year back rule." MCL 500.3145(1). In *Lewis,* this Court interpreted Section 3145(1) so as to be consistent with the no-fault statute's goals of decreasing litigation and ensuring prompt payment of claims.

Clearly, a decision by this Court to overturn *Lewis* would have far-reaching consequences, as predicted by the majority in *Lewis.* As noted previously, the floodgates of litigation would be wide open as a result of such a decision. Even more significantly, providers would simply go unpaid whenever a lawsuit was not filed within one year of providing treatment, even though a claim had been submitted and the insurer had simply not yet responded to the claim. In many cases, the provider would be limited to a much reduced payment for the medical services provided, which would come only at the

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

taxpayer's expense from the medicaid program, assuming the injured person was income eligible, or medicare, if the patient meets that program's age and/or disability requirements.

For those auto accident victims not eligible for either government program, medical providers would have no choice but to seek full recovery from the injured person as patient. In many cases, payment simply would not be made because of personal financial problems and the high cost of paying for medical services. In those situations, many individuals would be forced to file bankruptcy to erase the debt owed to providers after being injured. Such consequences harm not only auto accident victims and medical providers, but society as a whole, because it would only increase the overall health care costs for everyone.

In sum, CPAN and its members are concerned about the likely effects of altering the law as it currently exists. CPAN believes Michigan has a superior no-fault system that was formed for the very purpose of preserving quality health care and prompt payment of medical bills remains vital to its proper functioning. Thus, CPAN, urges this Court to affirm its prior ruling in *Lewis* so that the current no-fault claims system is not disrupted to the great detriment of everyone interested in our current health care system.

ARGUMENT

Despite ACIA's hyperbole, this Court's decision in *Lewis* is not a case of judicial activism run amok or usurpation of the legislature's prerogative. On the contrary, the *Lewis* decision is absolutely consistent with existing legal precedent as well as the legislative intent in adopting a no-fault system in Michigan. Section 3145 of the No-Fault Act in no way precludes application of "judicial tolling" where fundamental fairness requires it and the system as a whole would be devastated if it was not allowed in certain circumstances.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

I. THIS COURT SHOULD UPHOLD ITS PRIOR *LEWIS* RULING ALLOWING JUDICIAL TOLLING OF THE ONE YEAR BACK RULE WHEN A SPECIFIC CLAIM FOR BENEFITS WAS MADE AND DILIGENTLY PURSUED BECAUSE A CONTRARY RULING WOULD BOTH UNDERMINE THE NO-FAULT SYSTEM AND HARM PROVIDERS AND INJURED PERSONS WITH NO-FAULT CLAIMS

ACIA seeks to have this Court overturn *Lewis* solely because, in its view, *Lewis* was "wrongly decided." ACIA suggests that it is this Court's duty to correct all perceived errors of the past. Yet this Court recently has reiterated that the alleged "wrongly decided" nature of a prior decision, standing alone, is insufficient to warrant overruling. However, "the mere fact that an earlier case was wrongly decided does not mean overruling it is invariably appropriate." *Robinson v City of Detroit,* 462 Mich 439; 613 NW2d 307 (2000).

This Court should not lightly consider overturning a well-reasoned, consistent decision such as *Lewis*. While this Court clearly has the power to overturn its prior decisions, such power is not to be exercised easily. As this Court noted in *Boyd v WG Wade Shows,* 443 Mich 515; 505 NW2d 544 (1993), when it said the following:

> This Court has stated that a court will not overrule a decision deliberately made unless the Court is convinced not merely that the case was wrongly decided, but also that less injury would result from overruling than from following it. *Dolby v State Hwy. Comm'r,* 283 Mich. 609, 278 N.W. 694 (1938).
>
> . . . . This Court has stated that the doctrine of stare decisis applies with full force to decisions construing statutes or ordinances, especially where the Legislature acquiesces in the Court's construction through the continued use of or failure to change the language of a construed statute.

443 Mich at 524-26 (emphasis added). Something far more than a dissenting opinion, as here, is needed for this Court to consider overruling twenty years of precedent as to a

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

legislative provision, which has never been substantively amended, despite frequent changes to the no-fault law by the legislature as part of on-going tort reform measures.

More recently, in *Robinson,* the current majority on this Court identified those factors to be considered before a case can be overruled:

> Courts have cited numerous factors to consider before overruling a prior case. For example, *Helvering v Hallock*, 309 U.S. 106, 119, 60 S.Ct. 444, 84 L.Ed. 604 (1940), states:
>
> > [S]tare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience.
>
> We must also recognize that stare decisis is a "principle of policy" rather than "an inexorable command," and that the Court is not constrained to follow precedent when governing decisions are unworkable or are badly reasoned.

462 Mich at 464 (emphasis added). This Court continued:

> Courts should also review whether the decision at issue defies "practical workability," whether reliance interests would work an undue hardship, and whether changes in the law or facts no longer justify the questioned decision. See, e.g., *Planned Parenthood v Casey,* 505 U.S. 833, 853-856, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

462 Mich at 464 (emphasis added). Application of these factors to *Lewis* requires upholding the *Lewis* ruling, even assuming *arguendo* that the case was "wrongly decided."

Upholding *Lewis* would not collide with broader, sounder doctrine verified by experience. On the contrary, *Lewis* upholds key principles underlying the no fault system. As this Court stated in *Shavers v Attorney General,* 402 Mich 554; 267 NW2d 72 (1978), one primary purpose of the legislation was to reduce litigation by requiring insureds to

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

obtain benefits from their own insurance companies. In other words, the law was enacted so that insurers would not be able to avoid prompt payment of certain economic losses.

Lewis is not unworkable in everyday life. While ACIA suggests that *Lewis* would apply to any scenario, *Lewis* does contain limits; it requires a specific claim for benefits and diligent pursuit of those benefits – both inherently fact-based questions, on which, ACIA has, in fact, won on at the trial court in other cases. Moreover, *Lewis* does not "defy practical workability." *Lewis* makes it clear that insurers cannot avoid the payment of benefits through constant "investigation," delay, or other means of avoidance. When it comes to"practical workability," there is quite clearly no clamor from the lower courts for overruling *Lewis* as there was in *Robinson, supra,* at 450, n 9.

The reliance interests here also favor maintenance of the *Lewis* decision. In *Robinson,* this Court, applying the "reliance interest" factor, found no impediment to overturning the prior decision because of the unique circumstances surrounding that case:

> We conclude that these cases have not become so embedded, accepted or fundamental to society's expectations that overruling them would produce significant dislocations. It is apparent that the fleeing drivers, as they sought to evade the police, were undoubtedly not aware of our previous case law, nor is it likely that they drove as they did in reliance on the theory that they or the person injured as a result of their fleeing might have recourse against the municipality or individual police officers. In fact, it seems incontrovertible that only after the accident would such awareness come. Such after-the-fact awareness does not rise to the level of a reliance interest because to have reliance the knowledge must be of the sort that causes a person or entity to attempt to conform his conduct to a certain norm before the triggering event. Such a situation does not exist here.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

462 Mich at 466-67. In this context, however, there is substantial reliance on this Court's prior rulings and the principles it has applied in the past to no-fault claims administration.

As this Court noted in *Lewis,* "[m]ost persons are confident that, in the event of a loss, their insurer will pay their claim without the necessity for litigation." 426 Mich at 101. Auto accident victims and medical providers have relied on *Lewis* and the unchallenged holding that the one year back rule is tolled in applicable circumstances. Medical providers have refrained from filing lawsuits while the insurers are investigating or working out the priorities, for example. When an insurer has not formally denied a claim, the provider or the insured have acted in reliance on such knowledge. The system in place now has worked well since this Court issued *Lewis* in 1986. Overruling *Lewis*, however, would create the "chaos" mentioned by this Court in *Robinson* as what needs to be avoided.

If ACIA's position were to prevail, e.g., that the one year back rule is never tolled, then the floodgates of litigation would wreak havoc on the no-fault system. Every auto accident victim and every provider who treats someone injured in an automobile accident would be forced to file a preemptive lawsuit within one year of the date the accident occurred regardless of whether or not the insurer was still investigating the claim.

II. IF *LEWIS* IS OVERRULED, THIS COURT'S NEW INTERPRETATION OF THE ONE YEAR BACK RULE SHOULD ONLY BE APPLIED PROSPECTIVELY

This Court has also asked the parties to address the issue of retroactive versus prospective application, if this Court decides to overrule *Lewis*. Because of the monumental effect any such decision would have on auto accident victims and providers, as well as the no-fault and judicial systems, this Court should only do so prospectively.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

ACIA argues that there should be no question here of prospective versus retroactive application because *Lewis* was such a clear aberration. ACIA's Brief, at 20-22. While paying lip service to this Court's ruling in *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002), and the factors for prospective versus retroactive application, ACIA cites *Curtis v City of Flint,* 253 Mich App 555; 655 NW2d 791 (2002), for the proposition that "[a] question of retroactivity arises only where the decision overrules clear and settled precedent." ACIA's Brief, at 20. Contrary to ACIA's assertion, this Court's decision in *Lewis* was clear and settled. ACIA as much as admits this fact because it can point to no other decisions questioning or distinguishing *Lewis* or calling for its overruling. Further, ACIA itself admits, as it did at the trial court hearing in this case, that the lower courts were bound by the clear precedent established by this Court previously in *Lewis.*

ACIA also quotes *Curtis, supra,* at 566, for the proposition that it is not unexpected that this Court would overrule a decision that is contrary to the plain language of a statute. The *Curtis* decision, however, involved governmental immunity issues under *Robinson.* As noted in *Curtis,* this Court had previously and explicitly foreshadowed the reversal in *Robinson:* "[i]ndeed, in July 1999, the Court itself issued an order announcing its intent to revisit and potentially overrule [two earlier cases], thereby foreshadowing their ultimate demise." Similarly, in *Robinson,* this Court also noted that several Court of Appeals' decisions had called for the overruling of the prior precedent: 462 Mich at 450, fn 9. No such precedent exists here. There has been no clamoring to reverse *Lewis* by the judiciary.

ACIA also suggests that this Court has signaled that *Lewis* is an aberration when this Court noted that: "The correctness of the holding in the divided *Lewis* decision is not

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

before us." 462 Mich at 386, fn 5. By its plain language, this Court merely stated that *Lewis* was not at issue. In fact, because of the different tolling language used by the Legislature in §3145(1) – language that does not appear in §3145(2) regarding property damage claims – *Lewis* is actually consistent with this Court's decision in *Secura*. ACIA's self-proclaimed "persuasive argument" that there should prospective application of any ruling overturning *Lewis* is anything but compelling under these circumstances.

In *Pohutski, supra,* this Court discussed the considerations for determining whether an overruling decision should be applied retroactively or prospectively:

> Although the general rule is that judicial decisions are given full retroactive effect, *Hyde v Univ of Michigan Bd. of Regents,* 426 Mich. 223, 240, 393 N.W.2d 847 (1986), a more flexible approach is warranted where injustice might result from full retroactivity. *Lindsey v Harper Hosp.,* 455 Mich. 56, 68, 564 N.W.2d 861 (1997). For example, a holding that overrules settled precedent may properly be limited to prospective application. *Id.* . . . .
>
> This Court adopted . . . . three factors to be weighed in determining when a decision should not have retroactive application. Those factors are: (1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice. *People v Hampton,* 384 Mich. 669, 674, 187 N.W.2d 404 (1971). In the civil context, a plurality of this Court noted that *Chevron Oil v Huson,* 404 U.S. 97, 106-107, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971), recognized an additional threshold question whether the decision clearly established a new principle of law. *Riley v Northland Geriatric Center (After Remand),* 431 Mich. 632, 645-646, 433 N.W.2d 787 (1988).

465 Mich at 695-96 (emphasis added). Application of these principles in this case would clearly result in prospective application only should this Court decide to overrule *Lewis*.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

In *Pohutski,* this Court held that overruling prior erroneous decisions is tantamount to announcing a new rule of law, in answering the threshold question in *Riley v Northland Geriatric Center (After Remand),* 431 Mich 632, 645-46; 433 NW2d 787 (1988). The same reasoning applies should be applied in the case at bar.

In fact, this Court applied the three factors in *Pohutski* based on which it held that the decision in that case would be applied prospectively only:

> Application of the three-part test leads to the conclusion that prospective application is appropriate here. First, we consider the purpose of the new rule set forth in this opinion: to correct an error in the interpretation of § 7 of the governmental tort liability act. Prospective application would further this purpose. *See Riley, supra* at 646, 433 N.W.2d 787.

465 Mich at 697. Similarly, overruling *Lewis* would change dramatically how the one year back rule has been interpreted, and accordingly, it should be applied prospectively only.

ACIA's argument about having a reasonable opportunity to investigate claims actually supports prospective only application. While claimants are required to pursue the claims in a timely manner, insurers will be even more likely under the current law to handle and pay claims in a timely manner and cannot sit back and manufacture a defense. Further, ACIA's claims as to the fiscal viability of the no-fault system and the suggestion that a prospective overruling of *Lewis* would increase premiums and destroy the no-fault system is entirely without basis in the record. ACIA never substantiates its claim of the "hemorrhaging" of the no-fault system. Simply stated, this Court should not accept such unsubstantiated assertions as a basis for overruling *Lewis,* much less applying any such decision retroactively. The fact is that ACIA has collected millions in premiums from its

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

insureds and has not always paid full benefits. For ACIA to now invoke the interests of "policyholders" to avoid paying legitimate benefits is disingenuous at best.

ACIA argues that this Court at a minimum must apply any decision overruling *Lewis* retroactively to cases currently pending in the trial courts. ACIA's Brief, at 25. ACIA's position, however, completely ignores the defenses available to it under *Lewis*. Moreover, application of an overruling decision prospectively would avoid any adverse effects on current cases. Retroactive application though would harm those who relied upon the law and would allow the insurers to escape liability where they did not formally deny the claims. Prospective application would provide a clear rule. If overruled, all auto accident victims and medical providers would have to file lawsuits immediately or risk loss of benefits.

In *Pohutski*, the reliance factor also favored prospective application of the decision, where this Court stated the following:

> Second, there has been extensive reliance on the [past] interpretation of § 7 of the governmental tort liability act. In addition to reliance by the courts, insurance decisions have undoubtedly been predicated upon this Court's longstanding interpretation of § 7 . . . .: municipalities have been encouraged to purchase insurance, while homeowners have been discouraged from doing the same. Prospective application acknowledges that reliance.

465 Mich at 697. Similarly, in this case, there has been extensive reliance on *Lewis* by the courts of this state, as ACIA readily acknowledges. In addition, as discussed elsewhere, providers also rely on the insurers to act appropriately, and thus, rely on *Lewis* in deciding whether to bring a lawsuit or to continue to negotiate while the insurer investigates the claim. Again, as in *Pohutski,* prospective application recognizes that reliance.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

ELEPHONE 517-394-7500
FAX 517-394-7510

While ACIA suggests that the effect of what it calls the alleged "marginal loss of benefits" will be minimal, in fact, the detriment to providers, not to mention, individual injured persons, will be staggering. ACIA seemingly takes the position that insurers can delay paying claims without consequence to the injured person or his medical providers – the very parties that the no-fault system was designed to protect through prompt payment of claims. Without prospective application, no-fault claimants of any type will not know the rules ahead of time and will have no opportunity to protect themselves accordingly.

Finally, in *Pohutski,* this Court found that the "prospective application minimizes the effect of this decision on the administration of justice." 465 Mich at 697. In this case, a prospective application will have a similar effect. Contrary to ACIA's unsubstantiated and allegedly "self evident" arguments, application of an overruling decision to currently pending cases will, in many cases, require courts to revisit and reverse decisions already made based on *Lewis.* These cases have proceeded through discovery based on the rulings made in conformity with *Lewis.* Clearly, considerable effort and resources will be wasted and delays may result from any new strategies that may be adopted. Thus, the cleanest and least disruptive avenue is undoubtedly prospective application.

CONCLUSION

Based on the foregoing, CPAN asks this Court to uphold and reaffirm its prior ruling in *Lewis.* If, however, this Court should decide to overrule *Lewis,* the new interpretation of the one year back rule should only be applied prospectively.

SINAS DRAMIS LAW FIRM

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510

Respectfully submitted,

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
Attorneys for *Amicus Curiae* CPAN

Date: March 24, 2005

By: _____

George T. Sinas (P25643)
Steven A. Hicks (P49966)
3380 Pine Tree Road
Lansing, MI 48911
(517) 394-7500

SINAS, DRAMIS, BRAKE, BOUGHTON & McINTYRE, P.C.
3380 PINE TREE ROAD
LANSING, MICHIGAN
48911-4207

TELEPHONE 517-394-7500
FAX 517-394-7510